

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 90-421-T - ORDER NO. 91-275
APRIL 8, 1991

IN RE: Application of Robert E. Brizendine,)	ORDER DENYING
Trustee for Brown Transport Corporation)	PETITION FOR
to Transfer Class E Certificate of)	REHEARING, ORAL
Public Convenience and Necessity to)	ARGUMENT AND/OR
Skyline Transportation, Inc.)	RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Rehearing, Oral Argument and/or Reconsideration of Order No. 91-126, filed by F. Lee Prickett, Esquire, and John G. Felder, Esquire, attorneys for Southern Freight Lines, Inc., (the Petitioner-Intervenor), on March 12, 1991. Based upon a review of the Petition and the substantial evidence of the record, the Commission has determined that it should not rehear, grant oral argument, and/or reconsider Order No. 91-126. However, the Commission has determined that it should clarify certain aspects of Order No. 91-126. In doing so, we hereby modify Finding of Fact No. 8 as described below. However, based upon a review of the record and applicable law, Order No. 91-126 is otherwise affirmed, incorporated herein by reference, and modified only as to the additional findings and conclusions contained herein.

Finding of Fact No. 8 of Order No. 91-126 stated that "Based on the testimony of witness Reed, the Commission finds that the

transfer of Certificate No. 2540 by the bankruptcy court and the trustee to the Applicant is a sale and shows a consideration of \$500.00." The Commission notes that this matter is governed by the Order of the Honorable W. Homer Drake, United States Bankruptcy Judge, Northern District of Georgia, Atlanta Division, said Order being dated February 8, 1990. In that Order, Judge Drake states that "The trustee be, and he hereby is authorized to sell the property to Skyline Transportation, Inc. for the cash price of \$500.00 with said sum to be paid upon approval of the transfer of the property to Skyline Transportation, Inc. by the appropriate regulatory authority; . . ." The property referred to in said bankruptcy order is the Certificate of Public Convenience and Necessity No. 2540 issued by this Commission. The Commission notes that Judge Drake placed a condition precedent on the completion of this contract; and that prior to the Certificate being transferred for consideration, the contract of necessity had to be approved by the regulatory authority, which in this case, is the Public Service Commission of South Carolina. This Commission did not approve this transfer for consideration of \$500.00. In addition, no value has passed between the parties. Therefore, neither the contract, nor the sale has been completed.

The Commission therefore finds it necessary to modify Finding of Fact No. 8 in Order No. 90-126, to read as follows: "Based on the Order of February 9, 1990, of the Honorable Homer W. Drake, of the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division, and the necessity for Commission

approval, which was not given, this Commission concludes that no contract of sale of Certificate No. 2540 had been consummated, and therefore, no sale had been made."

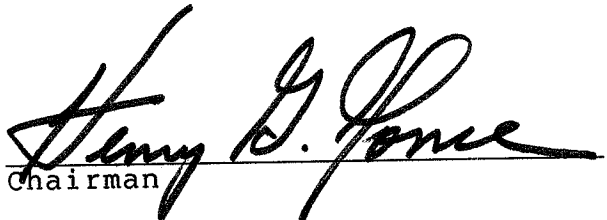
IT IS THEREFORE ORDERED:

1. The Petition for Rehearing, Oral Argument and/or Reconsideration is hereby denied.

2. Finding of Fact No. 8 of Order No. 91-126 is amended as reflected above and Order No. 91-126 shall otherwise remain in full force and effect except as modified by this Order.

3. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

VICE Chairman 

ATTEST:


Executive Director

(SEAL)